
UNITED STATES OF AMERICA)	
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)	DEFENSE REQUEST
v.)	FOR TRIAL DATE
)	Of 15 MARCH 2005
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DAVID HICKS)	2 November 2004
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The Defense in the case of the *United States v. David Hicks* provides the following requests that the trial phase of the commission commence after 15 March 2005:

I. This request is filed in accordance with the President's Military Order of November 13, 2001.

II. Relief Requested: The defense requests that the commission schedule the trial in the above matter for a period of time after 15 March 2005.

III. Discussion:

At the August session of the commission, the defense indicated that it believed the defense would be ready for trial on or about 10 January 2005. This belief was based on an assessment of the amount of discovery that had been provided, and that access to certain witnesses would have been granted in a manner allowing the defense to complete its pre-trial investigation and witness preparation in time for a trial on or about 10 January 2005. However, the defense's estimation of the time necessary to complete its pre-trial investigation and preparation has been rendered inaccurate by intervening events, and by the pace of other developments beyond the defense's control.

For example, the defense has not yet been permitted to interview other detainees at Guantanamo. While the defense first made written requests to interview detainees in January 2004 (repeated in February 2004 and June 2004), those requests were denied on the basis that JTF GTMO did not have any arrangements in place to accommodate those requests. It was not until 29 September 2004, more than a month after the initial session of the commission, that JTF GTMO established an SOP for defense counsel access to other detainees. Relatedly, the prosecution has agreed to provide, but has been unable to produce, for the defense a "face book" containing photos of each detainee held in Guantanamo – again, more than five months after the request was first made in writing. The defense needs this "face book" to identify, with the aid of Mr. Hicks, those detainees who may have relevant information regarding Mr. Hicks' case. Once the particular relevant detainees are identified, and their languages, too, interpreters will have to be requested through the Appointing Authority's office – a process that has also proven lengthy (perhaps months).

Also, the defense has been attempting to obtain country clearances for travel to Afghanistan and Pakistan to interview several specific potential witnesses it has identified. The required clearance applications have been submitted. The clearance for Afghanistan has yet to be acted upon. The clearance for Pakistan has been denied. The defense has been informed that a six-week advance request must be provided, which requirement was not reflected in the country clearance. As a result, the application must be resubmitted. As such, this stage of the investigation cannot commence until the middle of December 2004. The defense believes it the witnesses it has identified in Pakistan have information and evidence that is critical to Mr. Hicks' defense, and unavailable from any other source.

Moreover, despite the defense's efforts, it has been denied access to documents related to, and to witnesses assigned to, units on the ground in Afghanistan from October 2001–January 2002. The defense believes it is critical to Mr. Hicks' defense to interview these potential witnesses and review certain classified information generated during that period.

The government recently provided defense with the names of 43 government investigators who either interviewed Mr. Hicks, or were involved in the investigation of which he was the subject. The defense has not yet had the opportunity to interview these investigators. Also, the defense has been unable to arrange interviews with certain individuals in Federal custody who are likely to possess information about Mr. Hicks.

Furthermore, the government has yet to provide the defense a witness list, and has refused to provide a Bill of Particulars. Certainly, a critical phase of the defense investigation will begin only when a witness list is received, and unquestionably those witnesses will not be located in one geographical area, or within close proximity to defense counsel. Without a Bill of Particulars, the defense will be unable to prepare for trial.

The defense will be unable to accomplish the above and complete final trial preparation by 10 January 2005. The above tasks and interviews will require extensive coordination and travel by defense counsel. Taking into account the holidays in November and December, scheduling the trial for 15 March 2005 or thereafter may allow the defense the requisite time to complete its investigation and preparation.

In addition, the Charge Sheet suggests a breadth of this case that will encompass a huge swath of time and geography – at least fifteen years and five continents. The subject matter projected by the government also would entail separate investigations of a variety of contested issues and events occurring between 1989 and 2001, including assassination attempts, bombings, and meetings that require defense investigation and preparation.

Also, Mr. Hicks's new living arrangements make visiting him more time-consuming, and far more cumbersome with respect to case preparation. Since we cannot

visit him in his place of confinement, there is a limited amount of material he can bring with him to meetings, and, therefore, that we can cover at one time.

In addition, during the hearings this week, a commission member indicated a desire to hear expert testimony, but from an expert designated by the commission rather than the parties. That process could take some time (if done with appropriate deliberation and care), and should not be rushed in order to accommodate what the Appointing Authority has described as only a “tentative” trial date. Similarly, Mr. Hicks’s threshold motions, including the challenge to the failure to appoint an alternate, and other jurisdictional motions, as well as any case-dispositive motions that must be certified to the Appointing Authority, should be decided before sufficiently before trial. Otherwise, we will all be embarking on a fruitless mission.

Also in that context, evidentiary and other motions not directed at the face of the charge sheet or the commission’s jurisdiction have not been scheduled yet. Indeed, since the prosecution has not yet indicated what statements (and by whom) and/or documents it intends to offer in evidence, the defense cannot even begin to fashion appropriate evidentiary motions. Nor can the defense do so until the prosecution informs the defense of what evidence it intends to introduce. Those motions – to suppress, *in limine*, and others – will require significant preparation, evidentiary hearings, and argument before they can be resolved.

Accordingly, it is respectfully submitted that the current January 10, 2005, trial date be adjourned until March 15, 2005, at the earliest.

IV. Conclusion: Given the above, the defense requests that the commission schedule the trial date for Mr. Hicks for a date after 15 March 2005.

V. Oral Argument: The Defense requests oral argument on this motion.

By: _____//signed//_____
M.D. MORI
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Detailed Defense Counsel

_____//signed_____
JOSHUA L. DRATEL
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